

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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XENIA D. MOODIE-WILLIAMS and JAPETH
BRUCE,

Plaintiffs,

-against-

JOHN DOE DRIVER 1 (said name presently
unknown) Individually and as Agent, Servant and/or
Employee of WASHINGTON DELUXE
COMPANY, Q.T. TRANSPORT, INC., and/or DC
TRAILS, INC.; WASHINGTON DELUXE
COMPANY; Q.T. TRANSPORT, INC. individually
and/or doing business as DC TRAILS, INC.; DC
TRAILS, INC. individually and/or doing business as
Q.T. TRANSPORT, INC.; JOHN DOE DRIVER 2
(said name presently unknown) Individually and as
Agent, Servant and/or Employee of J.B. HUNT; J.B.
HUNT; JOHN DOES I-V (said names presently
unknown); ABC CORPORATIONS 1-10 (said names
presently unknown); DEF MAINTENANCE
COMPANY I-V (said names presently unknown);
and XYZ MANAGEMENT COMPANY (said names
presently unknown) individually, jointly, severally
and/or in the alternative,

Defendants.

MEMORANDUM AND ORDER

12-cv-03268 (ENV) (VMS)

VITALIANO, D.J.

Plaintiffs initiated this action on June 29, 2012, invoking diversity as the sole basis for the Court's jurisdiction. See 28 U.S.C. § 1332. In both its original and amended answers, defendant J.B. Hunt Transport, Inc. did not challenge diversity jurisdiction; other defendants have yet to respond. Notwithstanding, it is well settled that "[section] 1332 requires complete diversity between all plaintiffs and all defendants." *Cushing v. Moore*, 970 F.2d 1103, 1006 (2d Cir. 1992). The complaint on its face establishes that plaintiff Moodie-Williams is a citizen of

the state of New York, residing in Brooklyn. The complaint also alleges that defendant Washington Deluxe Company “was and is . . . duly incorporated and existing under the laws of the State of New York,” and “maintain[s] a principal place of business at 482 Bedford Avenue, Brooklyn, NY 11211.” Hence, Washington Deluxe Company is, for diversity purposes, also a citizen of New York. *See* 28 U.S.C. § 1332(c)(1) (“[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business . . .”).

Since at least one plaintiff and one defendant are citizens of New York, there is a lack of complete diversity. As a consequence, the Court lacks subject-matter jurisdiction to hear the case. Moreover, the absence of objection is irrelevant. “Subject matter jurisdiction cannot be waived,” *Yong Qin Luo v. Mikel*, 625 F.3d 772, 775 (2d Cir. 2010), and a court must dismiss a case *sua sponte* when it finds subject matter jurisdiction lacking. *See Endicott Johnson Corp. v. Liberty Mut. Ins. Co.*, 116 F.3d 53, 58 (2d Cir. 1997). Such is the case here.

CONCLUSION

For the reasons outlined above, on the Court’s own motion, the case is dismissed without prejudice to its refiling in a forum of appropriate jurisdiction.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: Brooklyn, New York
December 03, 2012

s/Eric N. Vitaliano

ERIC N. VITALIANO
United States District Judge